

Won a jury defense verdict for Foster Wheeler in a three-week asbestos trial in federal court in Massachusetts. The plaintiff—a sympathetic Navy widow represented by a high-profile asbestos plaintiff firm—asked for \$20 million in compensatory damages and \$43 million in punitive damages.

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WTO lawyers [John Fitzpatrick](#) and [Kate Mercer-Lawson](#) won a defense verdict for Foster Wheeler Energy Corporation in a high-stakes asbestos case in the U.S. District Court for the District of Massachusetts. The plaintiff, a sympathetic Navy widow, was represented by a high-profile asbestos plaintiff firm. Foster Wheeler was the only remaining defendant out of many sued.

Foster Wheeler supplied the Navy with boilers to propel the *USS Mullinnix* (a destroyer warship) in 1956. Those boilers contained asbestos materials pursuant to Navy specifications. The plaintiff boarded the ship in 1966 and claimed he was exposed to asbestos-containing insulation associated with the boilers. Decades later, he developed mesothelioma—a rare form of cancer that signals asbestos exposure—and filed suit, claiming that he would not have become terminally ill

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had Foster Wheeler put a warning on the boilers or in a technical manual.

Foster Wheeler argued that there was no reason to warn the Navy about asbestos in 1956 because, according to then-state-of-the-art science, working with boilers presented no danger. Foster Wheeler further explained how the Navy was at the forefront of sophistication and knowledge in terms of potential asbestos health hazards and had multiple safety measures in place. Foster Wheeler ultimately convinced the jury that when the plaintiff boarded the ship, 10 years after the delivery of the boilers, Foster Wheeler owed no warning duty to the end user. The plaintiff failed to prove her negligence and breach-of-warranty claims—both of which were predicated on a duty to warn—in full.

The case was particularly challenging as Foster Wheeler navigated a new landscape of potential jury instructions (favorable and unfavorable alike) as a result of the confusion stemming from the Supreme Court's 2019 ruling in *Air & Liquid Systems Corp. v. DeVries*. Foster Wheeler successfully argued for the proper duty-to-warn standard, rejecting the "foreseeability language" expressly rejected in *DeVries* and the state-law continuing duty to warn, both of which the plaintiff continued to press right up to the moment of charging the jury. Foster Wheeler also persuaded the court that it was entitled to two affirmative defenses: the government-contractor defense (which is not clearly recognized in some circuits as being available in a failure-to-warn claim) and the Navy's inaction as a superseding cause of the plaintiff's injury. But the jury never had to address the affirmative defenses after finding no duty to warn that could give rise to a breach sounding in negligence or warranty. The case lasted three weeks and drew audiences daily.